

• • R E M A R K S • •

The present Preliminary Amendment is being filed together with a Request for Continued Examination.

By the present Preliminary Amendment, claim 1 has been changed to recite that each of the front and rear waist regions extend between and to transversely opposite side edges of the disposable diaper, and that the each of the first elastically stretchable member and the second inelastically stretchable member extend between and to the transversely opposite side edges of the diaper, and that the gathers extend along the entire length of the at least one of the front and rear regions in the circumferential direction between and to each of the opposite side edges of the diaper.

Support for the changes to claim 1 can be readily found in the figures, particularly Fig. 1.

This change to claim 1 has been made to avoid the inference that the recitation of front and rear waist "regions" may only encompass limited portions of the front and rear regions.

Entry of the changes to independent claim 1 is respectfully requested.

On page 2 of the Office Action the Examiner has approved applicant's proposed drawing corrections submitted August 23, 2002 and has required applicant to submit corrected drawings. Accordingly, submitted herewith under separate cover are corrected formal drawings of Figs. 1 and 2.

Claims 1-6 and 8 are pending in this application.

In the Official Action of October 23, 2002 the Examiner rejected claims 1-6 and 8 under 35 U.S.C. §102(b) as being anticipated by European Patent Application No. 0 688 550 A1 to Kimberly Clark.

Overall, it seems that the basis of this outstanding rejection was the Examiner's interpretation that the elastic zones, front and rear waist regions and gathers were not claimed so as to require these elements to extend individually along the entire circumferential length of the diaper (note the Examiner's statement on page 2 of the Official Action that the gathers are "not necessarily in both zones along the entire length").

For the reasons set forth below, it is submitted that each of applicant's pending claims, as amended herein, is patentable over Kimberly Clark and therefore, the outstanding prior art rejection of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

In rejecting claim 1-3, the Examiner referred to the figures of Kimberly Clark together with page 2, lines 18-31, page 2, line 53 through page 3, line 3, page 3, lines 27-41 and 48-53, page 5, line 55 through page 6, line 48.

The Examiner stated that:

...either the second member, a part of the waist regions, will have gathers along the entire circumferential length due to it being a composite elastic material or the entire length of at least one of the waist regions will be gathered due to gathers in both zones as set forth at page 6, line 41 but not necessarily in both zones alone the entire length. It is noted that the gathers in claim 1 and those in claim 3 are deemed to be the same.

An understanding of Kimberly Clark begins with consideration of the prior art upon which Kimberly Clark improves. This prior art, as discussed at page 2, lines 7-12, includes elastic side panels that fit against the hips of a child and discrete front and back elastic waist strips, with the waist strips being "generally spaced from the elastic side panels"

The prior art reported by Kimberly Clark includes elastic side waist panels and “discrete” front and back elastic waist strips, but maintains these elements in a spaced apart relationship.

In context of the prior art, Kimberly Clark presents the disclosed invention as:

1) A disposable absorbent garment comprising “a continuous, selectively elasticized band joined about an opening thereof for improved fit and comfort;”

2) A disposable garment comprising “a partially elastic, continuous waistborder comprising a pair of elastic side segments and at least one non-elastic segment; and a continuous, elastic waistband joined to the partially elastic, continuous waistborder.” (a “preferred embodiment” described at page 2, lines 20-23);

3) A disposable garment comprising “a continuous waistborder defining a continuous waist opening, and in which the continuous waistborder has at least one non-elastic segment and at least one elastic segment; and a continuous elastic waistband comprising at least one recoverable portion that is capable of being temporarily inhibited, and at least one elastic portion having an elasticity substantially the same as an elasticity of the elastic segment.” “The continuous waistband is joined to the continuous waistborder with the elastic portion joined to the elastic segment, and the recoverable portion joined to the non-elastic segment.” (another “preferred embodiment” described at page 2, lines 24-31); and

4) A disposable absorbent garment comprising “a topsheet, a backsheet including a waistborder having at least one elastic segment and a non-elastic segment, and an absorbent structure disposed on the backsheet.” “An elastic waistband is joined to the waistborder and has an elasticity substantially the same as an elasticity of the elastic segment.” (a “still another embodiment” described at page 2, lines 33-35).

As can be seen in the prior art to Kimberly Clark and in each embodiment of Kimberly Clark, the waistborder 30 always includes elastic (side) portions and non-elastic (front and rear) portions.

The waistband 32 of Kimberly Clark has several configurations including one mentioned in the paragraph bridging pages 5 and 6 that is “a composite elastomeric web comprising individual, discrete strips or strands of elastomeric material secured to one of more nonwoven fibrous layers.” “Such a composite elastomeric web may, for example, comprise an elastomeric meltblown material arranged in a selected pattern of strips and suitably sandwiched and joined between two layers of nonwoven fibrous material.

In each embodiment of Kimberly Clark the waistband includes segments that have different elasticity.

The reason for Kimberly Clark’s providing different segments of elasticity around the waistband is to provide absorbent garments such as “training pants” that fit tight against the hips of a child while providing portions in the front and back that gather in order to adjust the size of the non-elastic portions of the garment to the child.

By the present Preliminary Amendment, independent claim 1 has been changed to recite that each of the front and rear waist regions extend between and to transversely opposite side edges of the disposable diaper, and that the each of the first elastically stretchable member and the second inelastically stretchable member extend between and to the transversely opposite side edges of the diaper, and that the gathers extend along the entire length of the at least one of the front and rear regions in the circumferential direction between and to each of the opposite side edges of the diaper.

Predominately, it is noted that the gathers of Kimberly Clark do not extend “along the entire length of said at least one of said front and rear regions in the circumferential direction between and to each of the opposite side edges of the diaper.”

Rather, only the portions of the waistband immediately adjacent the non-elastic front and back sections 14 and 16 form gathers.

In addition, the waistborder of Kimberly Clark does not include both a first elastically stretchable member and a second inelastically member that extend between and to the transversely opposite side edges of the diaper

Moreover, inasmuch as the waistband of Kimberly Clark is disclosed as having “discrete strips or strands or strands of elastomeric material secured to one or more nonwoven fibrous layers,” and because the waistband is otherwise configured to have portions with different elasticities that are coupled together as depicted in Fig. 2 (see portions 82, 88 and 90), the waistband does not include both a first elastically stretchable member and a second inelastically member that extend between and to the transversely opposite side edges of the diaper.

Because Kimberly Clark requires the waistband to have portions of different elasticity, there is no reason, i.e. motivation, to form the waist band with an elastically stretchable member that extends between and to the transversely opposite side edges of the diaper.

Even if such a continuous elastic member were used in Kimberly Clark, the gathers in Kimberly Clark would still only form adjacent the non-elastic portions of the front and back sections 14 and 18 as depicted and taught.

Accordingly, for the reasons set forth above, it is believed that the Examiner can no longer rely upon Kimberly Clark as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

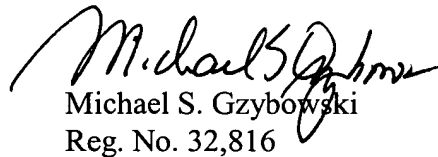
Entry of the present Preliminary Amendment is respectfully requested.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remains outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


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Marked-Up Copy of the Claims
As Amended on January 23, 2002

1. (Three Times Amended) A disposable diaper [having] comprising:

a front waist [region,] region extending between and to transversely opposite side edges of the disposable diaper;

a rear waist [region,] region extending between and to transversely opposite side edges of the diaper;

a crotch [region,] region located longitudinally between the front waist region and the rear waist region;

a [waist hole] waist-hole; and

a pair of leg-holes, said diaper further comprising:

at least one of said front and rear waist regions including a covering zone formed integrally with said crotch region and an elastic zone extending continuously along a full length in a circumferentially direction of said at least one of said front and rear waist regions to define at least part of said waist-hole;

said elastic zone including a first member that is elastically stretchable in said circumferential direction of said at least one of said front and rear waist regions to a length greater than a transverse length of said covering [zone] zone, said first member extending between and to the transversely opposite side edges of the diaper, and a second member covering said first [member,] member, said second member also extending between and to the transversely opposite side edges of the diaper; and

said second member being inelastically stretchable to a length greater than the transverse length of said covering zone and attached to an upper edge of said covering zone so as to form gathers that extend along the entire length of said at least one of said front and rear regions in the circumferential [direction.] direction between and to each of the opposite side edges of the diaper.